THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No. 8964 of 2003

ORDER:

Heard the learned counsel for the petitioner.

This writ petition has been filed seeking writ of *Mandamus* declaring the action of the respondent in proposed demolition of the structures raised in bearing D.No.45-50-10, Asst.No.57642, in Plot No.31 of T.P. No.35/66 of N.G.G.O's Layout, Akkayyapalem covered by S.No.65/1 of Allipuram ward is illegal, arbitrary, capricious, unjust, against the principles of natural justice and violation of Article 14, 21 and 300-A of the Constitution of India.

The case of the petitioner is that he entered into an agreement on 30-11-2002 to sell with power of attorney with his vendor Sri Allam Venkata Rama Rao who is absolute owner of the site measuring 458.33 square yards or 412.180 square meters together with tiled house thereon bearing D.No.45-50-10, Asst. No.57642 in Plot No.31 of T.P.No.35/66 of N.G.G.O's layout, Akkayyapalem, covered by S.No.65/1 of Allipuram ward within the limits of the Visakhapatnam Municipality Corporation. It is stated that the vendor of the petitioner, with a view to develop the property, has made an application on 01-10-2002 to the respondent Corporation for construction of ground, first and second floor R.C.C residential building. The respondent Corporation vide its endorsement dated 14-11-2002 requested the vendor to pay requisite amount for approval of the building permission. Immediately, the vendor complied with the above said objection and paid the amount on 14-11-2002. The respondent

Corporation has granted permission for the proposed construction of residential building of ground, first and second floor vide proceedings in B.A. No.11917/02/G5/ACP dated 04-12-2002. As per the approved plan F.A.R. is 1:0.84 and coverage area is 32% as per Rules. Subsequently, a revised plan for construction of third floor was submitted to the respondent Corporation on 15-12-2002 as per the required FSI. The respondent Corporation vide its endorsement dated 09-01-2003 returned the plan with certain objections and the same were complied with and submitted the forms as directed by the respondent Corporation on 14-01-2003.

It is further stated that the petitioner has proposed to start the construction work in the month of February, 2003 but to his utter shock and surprise the respondent Corporation returned the plans vide its endorsement dated 19-02-2003 on the ground that the applicant is permitted to construct G+1 as per modified Rules. Before releasing G+1, the applicant shall submit the certificate of supervision as required under Bye Law 4.2.1. of MCB Byelaws. The petitioner submitted all required certificates to the Corporation on 14-01-2003 wherein supervision certificate issued by the Raj and Raj Consultant and construction services was also filed. However, again the petitioner submitted the supervision certificate to the respondent Corporation as required by them. The petitioner was proceeding with the construction work from the last week of March, 2003 i.e. after 30 days of submission of the plans with supervision certificate as directed by the respondent Corporation only in accordance with the plan and provisions of the HMC Act and also bye-laws made thereunder.

The petitioner submitted that he proceeded with the construction work and raised columns as per the plan and building laws. While

things stood thus, the staff of the respondent Corporation visited the premises in the last week of April and threatened to demolish the constructions raised, without any kind of notice or intimation. Therefore,
the petitioner approached this Court.

While issuing "Rule Nisi" this Court passed interim direction dated 06-05-2003 in WPMP. No.11505 of 2003 as follows:

> *"Interim direction to the respondent not to demolish any structures of building raised in D.No.45-50-10, Asst.No.57642 in Plot No.31 of TP 35/66 of N.G.O's Layout, Akkayyapalem subject to due process of law."*

Learned counsel for the petitioner submits that having regard to the permission, the petitioner was proceeding with the construction as per the plan. The respondent authorities without issuing any notice, cannot demolish the structures raised by the petitioner in the site. She also submits that the action of the respondent is in violation of principles of natural justice as the petitioner's property is supposed to affect with the action of the respondent. The authorities are bound to issue notice that as to why the structures in question shall not be demolished or the reason for such demolition or any violation that has been made in making the construction.
No owner of the property is entitled to proceed with the construction without there being any approved plan.
The authorities are also empowered to take any action in the event of any violation in making construction in contravention of the plan.

The main grievance of the petitioner in this writ petition is that when he was proceeding with the construction as per the

approved plan, the respondent authorities without any notice came to the site and sought to demolish the structures.

Under which circumstances, the petitioner approached this Court.

This Court passed interim direction on 06-05-2003 directing the respondent not to demolish any structures of the building raised in D.No.45-50-10, Asst.No.57642 in Plot 31 of TP 35/66 of N.G.G.O's Layout, Akkayapalem, subject to due process of law. In view of the interim direction granted by this Court, the respondent authorities are bound to fallow due process and law that is by way of giving notice as per the Rules to the petitioner intimating the alleged violation in making the construction and thereby after considering the representation, if any, made by the petitioner to take further action.

In view of the facts and circumstances of the case and interim direction passed by this Court, no further orders are required to be passed in this petition and the interim direction dated 06-05-2003 is made as final order.

With the above direction, the Writ Petition is disposed of. No order as to costs.

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JUSTICE G. CHANDRAIAH

Date: 05-07-2006

LSK